

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4247 OF 2015

Vinayak K. Kuvalekar & anr. .. Petitioners
vs.
Zaverben D. Savla & ors. .. Respondents

Mr. D.S. Patil a/w. Mr. Akshay P. for the Petitioner.
Mr. Rakesh Agrawal for Respondents.

CORAM : M. S. SONAK, J.

DATE : 12 JUNE 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] This petition is directed against common order dated 1 April 2015, by which the Appellate Bench of the Small Causes Court has rejected the petitioners' application below Exhibit-13 for splitting up their appeal into an appeal against the order concerning mesne profits and a revision questioning execution and declining to condone delay in filing a revision application questioning execution.

4] In so far as the prayer for splitting up of the appeal is concerned, there is no reason to interfere with the same. However, this was a case where the petitioners had sufficient cause for not preferring the revision application against the execution order within prescribed period of limitation.

5] The records would indicate that as against the execution order, the petitioners had preferred the appeal before the Appellate Bench within the prescribed period of limitation. This was however, a common appeal questioning the order with regard to mesne profits as well as the execution. Later on, when the petitioners realised that an appeal may not be the appropriate remedy to question an execution order, the petitioners applied for splitting up of the appeal and perhaps by way of abundant caution also preferred a separate revision application accompanied by an application for seeking condonation of delay.

6] The delay in the present case, is hardly of about three to four months. It is apparent from the record that the petitioners had been pursuing their remedy as against the execution order by filing an appeal. This is not a case where the petitioners had been negligent

or that the petitioners obtained any undue advantage on account of the delay involved.

7] No doubt, there is substance in the contention of the learned counsel for the respondents that on account of such confusion, the proceedings have been protracted at least to some extent. For this, the petitioners can be made liable to pay costs. There is already an order for expeditious disposal of the appeal and the same order will also apply for expeditious disposal of the revision application.

8] Accordingly, the delay in filing revision application, i.e., MARJI Application No. 565 of 2014 is condoned. The revision application to be heard alongwith Appeal No. 20 of 2014 and both the matters to be disposed of as expeditiously as possible and in any case by 30 September 2015.

9] The petitioners to pay costs of Rs.5,000/- (Rs. Five Thousand only) to the respondents. Such costs may be directed paid to the respondents or deposited before the Appeal/Revisional Court, within a period of two weeks from today, where from the respondents shall be at liberty to withdraw the same unconditionally. It is noted that in

the present case, it is the Appellate Bench of the Small Causes Court, is entitled to exercise both appellate as well as revisional jurisdiction and consequently, there can be no difficulty in both the appeal as well as the revision being disposed of together.

10] It is, however, clarified that this Court has not gone into the merits of the matter including the issue as to whether the remedy of revision is either available to the petitioners or not. Accordingly, said question as also all contentions of all parties are kept open for decision by the Appellate Bench.

11] Rule is made absolute to the aforesaid extent. There shall be no separate and further order as to costs in this petition.

12] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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